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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,786	11/17/2003	W. Michael Bissonnette	03-02	2438

7590

06/02/2005

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/714,786	<b>Applicant(s)</b> BISSONNETTE ET AL.	
	<b>Examiner</b> Andrea M. Valenti	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-13 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*[Handwritten signature]*

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 4, 11, 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,961,444 to Skaife.

Regarding Claim 1, Skaife teaches a seed-support medium comprising: a seed-bearing substrate (Skaife Col. 4 line 5-7) upon a dry hydrophilic cellular substrate (Skaife Fig. 6 #32 and Col. 2 line 36) contained within a porous (Skaife Fig. 6, 10, and 12 arrows of water flow through porous/aperture and Col.2 line 60-61), cup-shaped rigid modular receptacle; and a seal upon the receptacle (Skaife #14, 82, 54 and 24); wherein the medium is storable without germination of the seed (Skaife Col. 2 Line 52-58).

Regarding Claims 2 and 3, Skaife inherently teaches the seed-bearing substrate is a hydrophilic fiber or a plant starch (Skaife teaches peat which is composed of vegetable tissue formed by partially decomposed plants, thus it constitutes fibers and starch).

Regarding Claim 4, Skaife teaches the seed-bearing substrate is an adhesive (Skaife Col. 4 line 5-7).

Regarding Claim 11, Skaife teaches the seal is opaque (Skaife Fig. 1 #14)

Regarding Claims 12 and 13, Skaife teaches the seal is transparent and translucent (Skaife Fig. 11 #82 and Fig. 10 #54).

Regarding Claim 21, Skaife teaches the seal is plastic (Skaife Col. 3 line 48).

Regarding Claim 22, Skaife teaches the substrate is dry (Skaife #32 and Col. 2 line 52-58 and Col. 4 line 10-14).

Regarding Claim 23, Skaife inherently teaches the seal (Skaife Fig. 10 #54) regulates moisture during germination.

Regarding Claim 24, Skaife teaches the medium is storable without germination of the seed until a desired time when aqueous solution is applied (Skaife Col. 2 line 52-58).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,961,444 to Skaife in view of U.S. Patent No. 6,615,539 to Obonai et al.

Regarding Claims 6, 7, and 8, Skaife is silent on the hydrophilic cellular substrate is a synthetic polymer, sponge, or rock wool. However, Obonai teaches that there are many alternate equivalent hydrophilic cellular substrates including rock wool, sponge and synthetic polymers (Obonai Col. 15 line 67 and Col. 16 line 4-27). It would have been obvious to one of ordinary skill in the art to modify the teachings of Skaife with the

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teachings of Obanaï at the time of the invention since the modification is merely an engineering design choice involving the selection of an alternate plant substrate to obtain a desired degree of water retaining capacity, water conveying capacity, ion exchange properties for different seed varieties. (e.g. U.S. Patent No. 3,082,575 to Schulz Col. 3 line 7-8).

Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,961,444 to Skaife in view of U.S. Patent No. 4,124,953 to Patton.

Regarding Claims 5 and 9, Skaife is silent on the hydrophilic cellular substrate further comprises adjuvants or the seed-bearing substrate further comprises adjuvants. However, Patton teaches a hydrophilic cellular substrate with adjuvants (Patton Col. 2 line 61). It would have been obvious to one of ordinary skill in the art to modify the teachings of Skaife with the teachings of Patton at the time of the invention for the advantage of an nutrient supply to promote healthy plant development.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 9, 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,124,953 to Patton.

Regarding Claim 1, Patton teaches a seed-support medium comprising: a seed-bearing substrate (Patton Col. 3 line 14-16) upon a dry hydrophilic cellular substrate (Patton Col. 2 line 61) contained with a porous (Paton Fig. 3 #12 and 35), cup-shaped rigid modular receptacle; and a seal (Patton #20) upon the receptacle; wherein the medium is storable without germination of the seed (Patton Col. 4 line 15-45).

Regarding Claims 2 and 3, Patton inherently teaches the seed-bearing substrate is a hydrophilic fiber or a plant starch (Patton teaches peat which is composed of vegetable tissue formed by partially decomposed plants, thus it constitutes fibers and starch).

Regarding Claim 4, Patton teaches the seed-bearing substrate is an adhesive (Patton Col. 3 line 14-16).

Regarding Claim 9, Patton teaches the hydrophilic cellular substrate further comprises adjuvants (Patton Col. 2 line 61).

Regarding Claims 12 and 13, Patton teaches the seal is transparent and translucent (Patton Fig. 3 #20).

Regarding Claim 21, Patton teaches the seal is plastic (Patton Col. 2 line 47-48).

Regarding Claim 22, Patton teaches the substrate is dry (Patton Col. 2 line 61).

Regarding Claim 23, Patton teaches the seal regulates moisture during germination (Patton Fig. 3 and 5 and Col. 4 line 15-45).

Regarding Claim 24, Patton teaches the medium is storable without germination of the seed until a desired time when aqueous solution is applied (Patton Col. 4 line 15-45).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,124,953 to Patton in view of U.S. Patent No. 6,615,539 to Obonai et al.

Regarding Claims 6, 7, and 8, Patton is silent on the hydrophilic cellular substrate is a synthetic polymer, sponge, or rock wool. However, Obonai teaches that there are many alternate equivalent hydrophilic cellular substrates including rock wool, sponge and synthetic polymers (Obonai Col. 15 line 67 and Col. 16 line 4-27). It would have been obvious to one of ordinary skill in the art to modify the teachings of Patton with the teachings of Obonai at the time of the invention since the modification is merely an engineering design choice involving the selection of an alternate plant substrate to obtain a desired degree of water retaining capacity, water conveying capacity, ion exchange properties for different seed varieties. (e.g. U.S. Patent No. 3,082,575 to Schulz Col. 3 line 7-8).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,124,953 to Patton.

Regarding Claim 11, Patton is silent on the seal is opaque. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Patton at

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the time of the invention since the modification is merely a change in color for an aesthetic marketing effect and to meet the "Light" needs of different plant varieties.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,124,953 to Patton in view of U.S. Patent No. 4,790,105 to Wareing.

Regarding Claim 5, Patton is silent on the seed-bearing substrate further comprises adjuvants. However, Wareing teaches a seed-bearing substrate further comprises adjuvants (Wareing Col. 3 line 24). It would have been obvious to one of ordinary skill in the art to modify the teachings of Patton with the teachings of Wareing at the time of the invention for the advantage of providing beneficial effects on the seed growth and development.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9, 11-13, 21-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Pub. No. US 2005/0076565; U.S. Patent No. 3,082,575; U.S. Patent No. 3,078,985; U.S. Patent No. 5,224,295.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Patent Examiner  
Art Unit 3643

26 May 2005



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5/31/05